FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 50/2007

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : February 21, 2007.

Heard Mr. Mardikar for the appellant.

The appellant is the original defendant. The plaintiff and the defendant are the real brothers. A suit was filed by the plaintiff against the defendant for possession of the suit property which comprises of two rooms. It is the case of the plaintiff that the defendant was running his floor mill in a room adjacent to the two rooms which form the suit property and, therefore, the plaintiff had given these two rooms to the defendant as a licensee since May, 1988. According to the plaintiff, two rooms were allotted to the share of the plaintiff in the family partition.

The defendant denied the claim of the plaintiff, however, admitted that the plaintiff is the owner of the suit property and the suit property was allotted to the share of the plaintiff in the family partition. According to the defendant, the plaintiff was in need of some funds for construction of temple and, therefore, the plaintiff had sold the suit property to the defendant for consideration of Rs. 7,000/-.

The trial and the appellate Court did not find

favour with the case of the defendant. The Courts held that the defendant was a licensee in the suit property and not the owner of the suit property. The Courts further considered that there was a variance between the documentary evidence and the oral evidence tendered by the defendant in respect of the payment of Rs. 7,000/- to the plaintiff towards the sale consideration. It is an admitted position that the plaintiff had never executed a sale deed in respect of the suit property in favour of the defendant. The Courts, after considering the evidence of the parties, recorded that it was quit natural for the plaintiff to allow his own brother to use the suit premises as licensee. Since the ownership of the plaintiff over the suit premises was not disputed, the Courts rightly accepted the case of the plaintiff that the defendant was using the suit premises as a licensee.

The findings recorded by the trial and the appellate Court are the concurrent findings of facts based on the evidence tendered by the parties on record. The findings recorded by both the Courts are extremely reasonable and do not give rise to any substantial question of law.

Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP